

### **REMARKS**

The Office Action mailed June 26, 2008, has been received and reviewed. By the present Response, Claims 33 and 39 are canceled and Claims 1, 14, 24, 25, 31, and 34 are amended. Currently pending in the application, then, are Claims 1, 3-25, 31, 32, 34-38, and 40-43, of which Claims 1, 14, 21, and 31 are independent. No new matter has been introduced by this Response. The Applicant respectfully traverses the rejections and requests reconsideration.

#### ***Double Patenting***

Claims 1, 3-25, and 31-43 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-30 and 37-41 of co-pending U.S. Patent Application No. 10/737,533. The rejection is provisional because the conflicting claims have not in fact been patented.

The Applicant notes that the co-pending application is being allowed to go abandoned by the Applicant failing to timely respond to an outstanding Office Action mailed on June 26, 2008. Accordingly, this conflicting application will go abandoned as of December 27, 2008, and the Applicant requests this provisional rejection be withdrawn.

#### ***Claim Rejections Under 35 USC § 102***

Claims 14 and 15 stand rejected under 35 U.S.C. 102(a) as being allegedly anticipated by Ours (US 4,048,471). The applicant respectfully traverses this ground of rejection.

Claim 14 is amended to recite claimed subject matter in means-plus-function format to allow more patentable weight to be given to the functional aspects of the claimed subject matter. Because more patentable weight should be given to the recited function, this claim as amended is believed to be in condition for allowance.

In addition, the Applicant reasserts that the Ours reference is not pertinent art. The blade of the Ours reference is designed for spreading plastic filler material when repairing dents in automobile bodies, and in no way is it for incising or separating anything. This reference is extremely remote from and completely unrelated to microkeratomes for laser refractive eye surgery, and is no more pertinent than plastic blades of fans. So the Ours spreader blade and the claimed microkeratome blade are entirely different types of blade structures designed for entirely different functions. (In fact, the cited reference is included in 2 International Classifications and 8 U.S. Classifications, and the field of search during its prosecution included 34 International Classifications, as indicated on the cover sheet of the patent. But the International and U.S. Classifications of the present application are not included in any those classes.) Because dent-filler spreaders are so far afield from microkeratomes for laser refractive eye surgery, a person of ordinary skill in the art designing advanced microkeratomes would not look to the field of heated dent-filler spreaders for guidance. For this reason, the Applicant respectfully asserts that the Ours reference is not pertinent art, and requests this rejection be withdrawn.

For all of these reasons, Claim 14 is believed to be in condition for allowance. Claim 15 depends from Claim 14, so it too is believed to be in condition for allowance.

***Claim Rejections Under 35 USC § 103***

Claims 16-20 and 25 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Ours. These claims all depend from Claim 14, which is believed to be in condition for allowance for the reasons set forth below, so these claims are also believed to be in condition for allowance. In addition, the Ours reference is believed to not be pertinent prior art, as discussed above. For this additional reason, the Applicant respectfully requests reconsideration and withdrawal of this rejection.

Claims 1-8, 13-20, 25, and 31-43 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Pallikaris et al. (US 7,004,953) in view of Foggia et al. (US

5,782,852. Claims 33 and 39 are canceled. The Applicant respectfully traverses the rejection of the remaining claims.

As discussed above, Claim 14 is amended to recite claimed subject matter in means-plus-function format to allow more patentable weight to be given to the functional aspects of the claimed subject matter. Claim 1 is similarly amended using means-plus-function format. Because more patentable weight should be given to the recited function, these claims as amended are believed to be in condition for allowance.

In addition, the Applicant reasserts that the Foggia reference is not pertinent art. The Foggia reference discloses a finger-sticking device for creating a puncture wound from which a blood sample can be obtained. The surgical arts is a vast multidisciplinary field with many quite highly specialized areas. The specialized field of refractive eye surgery includes many highly specialized devices, including sophisticated, extremely expensive lasers systems and microkeratomes. A designer pursuing safer and more precise designs in blades for microkeratomes for use in refractive eye surgery would not reasonably be expected to investigate finger-sticking devices. Because finger-sticking devices are so far afield from microkeratomes for laser refractive eye surgery, a person of ordinary skill in the art designing advanced microkeratomes would not look to the field of finger-sticking devices for guidance. For this reason, the Applicant respectfully asserts that the Foggia reference is not pertinent art, and requests this rejection be withdrawn.

For all of these reasons, Claims 1 and 14 are believed to be in condition for allowance. Claims 2-8, 13, 15-20, and 25 depend from Claims 1 and 14, so they too are believed to be in condition for allowance.

Claim 31 as amended recites the step of disposing of the separator after a single use. None of the cited references disclose using a blunt polymeric separator to separate the epithelium from the cornea, leaving Bowman's layer intact, and then disposing of the separator after a single use. All known microkeratomes have expensive metal blades that

are sanitized and reused. Because none of the cited references disclose, teach, or suggest the claimed steps, the Applicant requests that this rejection be withdrawn.

In addition, the Applicant believes that the Foggia reference is not pertinent art for the reasons set forth above. For that additional reason the Applicant requests that this rejection be withdrawn.

For these reasons, Claim 31 is believed to be in condition for allowance. Claims 32, 34-38, and 40-43 depend from Claim 31, so these claims are also believed to be in condition for allowance.

Claims 9 and 21 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Pallikaris/Foggia in view of Samuels (US 6,247,389). The Samuels reference discloses polymer cutters that cut polymer strands. This reference is wholly unrelated to microkeratomes for laser refractive eye surgery. Quite simply, a person of ordinary skill in the art designing advanced microkeratomes would not look to the field of polymer-strand-cutting devices for guidance. For this reason, the Applicant respectfully asserts that the Samuels reference is not pertinent art, and requests this rejection be withdrawn.

Claims 10 and 22 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Pallikaris/Foggia in view of Feingold (US 6,083,236). These claims depend from Claims 1 and 14, which are believed to be in condition for allowance for the reasons set forth above, so these claims are also believed to be in condition for allowance.

Claims 11 and 23 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Pallikaris/Foggia in view of Scwemberger et al (US 5,569,292). These claims depend from Claims 1 and 14, which are believed to be in condition for allowance for the reasons set forth above, so these claims are also believed to be in condition for allowance.

**CONCLUSION**

In view of the amendments submitted herein and the above comments, it is believed that all grounds of rejection are overcome and that the application has now been placed in full condition for allowance. Accordingly, the Applicant respectfully requests early and favorable action. Should there be any further questions or reservations, the Examiner is urged to telephone the Applicant's undersigned attorney at (770) 984-2300.

Respectfully submitted,

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